

Connie Kwan
Pro se creditor

To:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Connie Kwan hereby respectfully submits this motion for entry of an order to rule that (1) ownership of ALL the coins she deposited into the Celsius Earn platform belong to her and not the Debtors, (2) that the coins are due to her in kind as BTC, MATIC, OMG and not in another form, and (3) that the 'Earn' account receives equal standing (seniority/preference) in bankruptcy proceedings with 'Custody' Accounts.

I respectfully state as follows:

1. I have been an account holder at Celsius Network since April 30, 2020. My assets, as of Celsius Network's Bankruptcy filing, were in an 'Earn' account. I serve this motion and request a hearing to ensure that my deposits are deemed my property and that my 'Earn' account receives equal standing (seniority/preference) in bankruptcy proceedings with 'Custody' Accounts. My account holdings are presented in Exhibit A.
2. Digital assets in Earn accounts are customer assets. The deposit of digital assets into Celsius' network for earning rewards does not convert these assets into Celsius' assets. Celsius did not treat my deposits of digital assets as a disposal of property or a transfer of title. Instead, I paid taxes on the deposited assets to the IRS based on the 1099 forms generated **by Celsius**. This tax treatment demonstrated that I retained ownership of the assets and that I was in constructive receipt of interest paid as it was deposited into my account by Celsius.
 - a. At my account opening, there were no separate 'Earn' or 'Custody' wallets but only personal Celsius wallets.
 - b. The returns (rewards) on my deposited assets (BTC and ETH) were not exorbitant but rather in the range of 3-6%. Celsius' 'Terms of Use' and web AMAs

(Ask Me Anything with CEO) indicated that customer assets can be lent out to carefully vetted over-collateralized institutional borrowers. Based on my understanding, this is similar to Etrade or Fidelity loaning customer shares to institutions (e.g. short selling) and in the process returning interest on your shares. (*Please refer to Celsius' email in Exhibit A denoting BTC and ETH returns of 4.03% and 3.8% respectively for a sample week.*)

- c. I paid taxes for the rewards earned on the digital assets deposited at Celsius to IRS for tax years 2020-2021. Celsius itself generated 1099 forms for income earned. My Earn assets should not be now treated as Celsius' (estate) assets for settlement and/or distribution while Custody or other accounts are treated as their own assets and given better treatment in these bankruptcy proceedings. (*Please refer to Exhibit A for the screenshot of Celsius 2020 and 2021 Tax 1099 form.*)
3. To the extent any 'Terms of Use' were updated and modified, these changes were made in an inconspicuous manner. Any such clauses (or change to clauses) with material impact on customers with respect to, for example, use of the assets, or the transfer of ownership to Celsius', or limitations on exercising certain ownership rights were obfuscated and were never expressly or conspicuously disclosed.
 - a. At account opening and initial transfer of our personal digital assets to Celsius Network, 'Terms of Use Version 1' was applicable. The entire 'Terms of Use Version 1' does not have any mention of transfer of ownership rights to Celsius. In fact, Section 14 is entitled, "Consent to Celsius's Use of **Your** Digital Assets." (emphasis added).
 - b. Also, the 'Terms of Use Version 1 paragraph 31' expressly stated that the notice of changes to the 'Terms of Use' would be provided with the specific additions, deletions or subtractions to the 'Terms of Use'. Celsius did not send me any email for 'Change in Terms'. Even if it had done so, it would have been imperative to communicate expressly and unambiguously any material changes and to ask the customer to explicitly accept the changed 'Terms of Use'.
4. I believe I was misled on Celsius' regulatory compliance and at the time of creation of Custody accounts (April 2022), I was grandfathered into continuing with an Earn account without any option to transfer assets into a Custody account, thus giving Custody account holders an advantage to my detriment. Celsius' email (April 12, 2022) regarding the upcoming changes to my account failed to mention that I would have less favorable rights than Custody but instead merely advised I did not need to transfer my assets to the new Custody account. The emails also do not mention the 'Cease and Desist' orders from certain jurisdictions leading to the Custody account creation. The emails did not convey the differences between Earn and Custody accounts or that Earn Accounts have

higher risks than Custody accounts or could have lower priority in a bankruptcy proceeding.

- a. On April 12, 2022, I received an email from Celsius regarding upcoming changes to Celsius ‘Terms of Use’
- b. Celsius’ email indicates that the changes are being made in consultation with United States regulators concerning Earn accounts/product.
- c. Celsius’ email had a section explaining the impact of the changes under the heading “**how these changes impact you**”. But the details within the section obfuscate the most material impacts to my Celsius account. There is no mention of any possible impairment of my ownership rights or risks associated with “New Earn Accounts” or how these “New Earn Accounts” would differ from newly-created Custody accounts.
- d. Celsius’ email also states that my “All coins transferred to Celsius by users in the United States prior to April 15, 2022 will continue to earn rewards. Those existing coins will continue to earn rewards from April 15th and onward, for as long as they remain in their Earn accounts” but fail to mention the added risk of Earn accounts compared to Custody accounts.
 - i. The Court now knows that thousands of other Earn accounts similar to mine, but held by residents of other states/jurisdictions, were transferred into Custody. As per Celsius, my account remained in Earn solely per regulatory requirements of my state. It is unconscionable that I may have been burdened with additional risks to the other Earn account holders whose assets were transferred into Custody.
 - ii. If there was no explicit approval from California (tax state on my account) regarding Earn or Custody products, I should have been permitted to withdraw my funds and the account should have moved to “withhold” status in the interim.
 - iii. It is particularly significant that many of the other accounts transferred from Earn to Custody were internal Celsius accounts (held by employees, executives, investors, etc.) or people with advance inside knowledge of the financial difficulties at Celsius who wrongfully received and apparently may now be enjoying preferential treatment.

- e. The Custody FAQ on Celsius' website also described Custody solution as similar to a typical Earn account/product. *Please refer to the Custody FAQ in the Exhibit B.*
 - f. These Celsius emails and 'Terms of Use' clearly indicate that as an account holder, my account was transferred to Earn without any other option provided to us. The emails also fail to disclose any additional risks for Earn accounts over Custody accounts. Also as an Earn account holder for years, I did not undertake any additional risks to the other accountholders whose account were transferred into Custody automatically by Celsius. Finally, as a non-accredited depositor, I should have been made aware of 'Cease and Desist' orders and offered a Custody or Withdrawal option.
- g. *Please refer to Celsius' emails in Exhibit B supporting the above statements.*
- 5. Argument against 'Terms of Use' implying assets deposited to Celsius Earn program by customers are Celsius' assets. Celsius inconspicuously inserted clauses in various 'Terms of Use' versions that claim the deposit of assets into Celsius grants Celsius the ownership. Yet there are also contradictory clauses in the Terms of Use (all versions) regarding ownership and withdrawals. Any ambiguity should be construed against Celsius as the drafter.
 - a. Celsius' Terms of Use clearly state that customers can withdraw their digital assets at any time. If these were Celsius' assets, these will not be accessible for us to withdraw.
 - b. The ability to be able to withdraw our assets and also having paid taxes on the deposited digital assets (based on Celsius generated 1099 forms) clearly demonstrate that the assets were indeed my property. And that I possessed ownership rights and access to these digital assets at all times.
 - c. Please refer to the specific paragraph 12 from 'Terms of Use Version 5' pertaining to withdrawals:

"12. Withdrawals

You may make a complete or partial withdrawal of Eligible Digital Assets from your Celsius Wallet at any time. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal."

- d. Please refer to the specific paragraph 11 from 'Terms of Use Version Apr 14th 2022' pertaining to withdrawals:

11. Withdrawals

Subject to these Terms, for any of your Eligible Digital Assets that you elect to utilize in the Earn Service (if available to you), you have a call option on all loans made to Celsius to demand immediate, complete or partial repayment of any loan at any time through (i) transfer to a Custody Wallet, if available to you, or (ii) a complete or partial withdrawal of Eligible Digital Assets from your Celsius Account balance at any time. Such repayment will terminate in whole or in part your loan to Celsius and you shall no longer accrue Rewards on the amount of loans as of the time of your exercise of the call option. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal.

Reservation of Rights

I, as Movant/Declarant, fully reserve all of my rights and claims to fully supplement this Motion. I hereby assert a lack of due process in determining my property rights in this bankruptcy proceeding. I further maintain that the issue of whether my Earn Account assets constitutes property of these estates is not properly before this Court at this time.

I do not permit any of my coins to be sold to fund the debtors operations.

I ask to be excluded from the forced participation in a re-organization by a company that has lied, deceived and cheated its customers. No reasonably intelligent person would trust Celsius ever again after the discovery they attempted to steal customer assets. There is no future for Celsius, so let's stop the burn of remaining customer funds.

I reserve the right to ask for a share of equity in any illiquid assets that customer funds have been used to purchase, a share in any future insider clawbacks and a share in the return of loaned or staked assets to fill any shortfall in my original deposit.

Connie Kwan

Pro Se Celsius Creditor

Exhibit A

1. Current account holdings, photo from snail mail document from Stretto.

CONNIE KWAN
REEDWOOD CITY, CA [REDACTED]

Celsius Account Email: [REDACTED]naestro.com

Celsius Network LLC has listed your claim on Schedule EF Part 2 as a **General Unsecured** claim comprising of the coin(s) listed in the table below. If you agree with the characterization, amount of your claim, and your claim is not listed as Contingent, Unliquidated, Disputed, you do not need to submit a claim form.

SCHEDULE F LINE	3.1.114430		
INDICATE IF CLAIM IS CONTINGENT, UNLIQUIDATED, DISPUTED			
IS THE CLAIM SUBJECT TO OFFSET? (YES/NO)			
EARN ACCOUNT	CUSTODY ACCOUNT	WITHHELD ACCOUNT	COLLATERAL ON LOAN RECEIVABLE
BTC 2.75645895299381 CEL 1.1161592885297 MATIC 74331.1138146938 OMG 4.03452947793026	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]

2. Celsius Account Verification complete email,

[Celsius Network] Identity Verification Completed - April 30, 2020 6:17 AM (UTC) [External](#) [Celsius](#) [Celsius/Celsius Deposit](#)

Celsius Network <app@celsius.network>
to me

Thu, Apr 30, 2020, 2:18 AM [Star](#) [Reply](#) [More](#)



Identity Verification Completed

You are all set to make your first [deposit](#), earn interest on your holdings, get USD and coin loans and so much more.

If you have any questions, please be sure to check out our [Help Center](#) page or contact [Celsius Support](#).

Celsius Network, 35 Great St. Helen's, London EC3A 6AP United Kingdom
© Celsius Network 2019

[f](#) [t](#) [g](#) [m](#)

3. Deposit completed email (one of several)

[Celsius Network] Transfer Completed - October 15, 2020 8:22 PM (UTC) [Inbox](#) [Celsius](#) [Celsius/Celsius Deposit](#)

Celsius Network <app@celsius.network>
to me

Thu, Oct 15, 2020, 4:22 PM [Star](#) [Reply](#) [More](#)



Deposit Completed



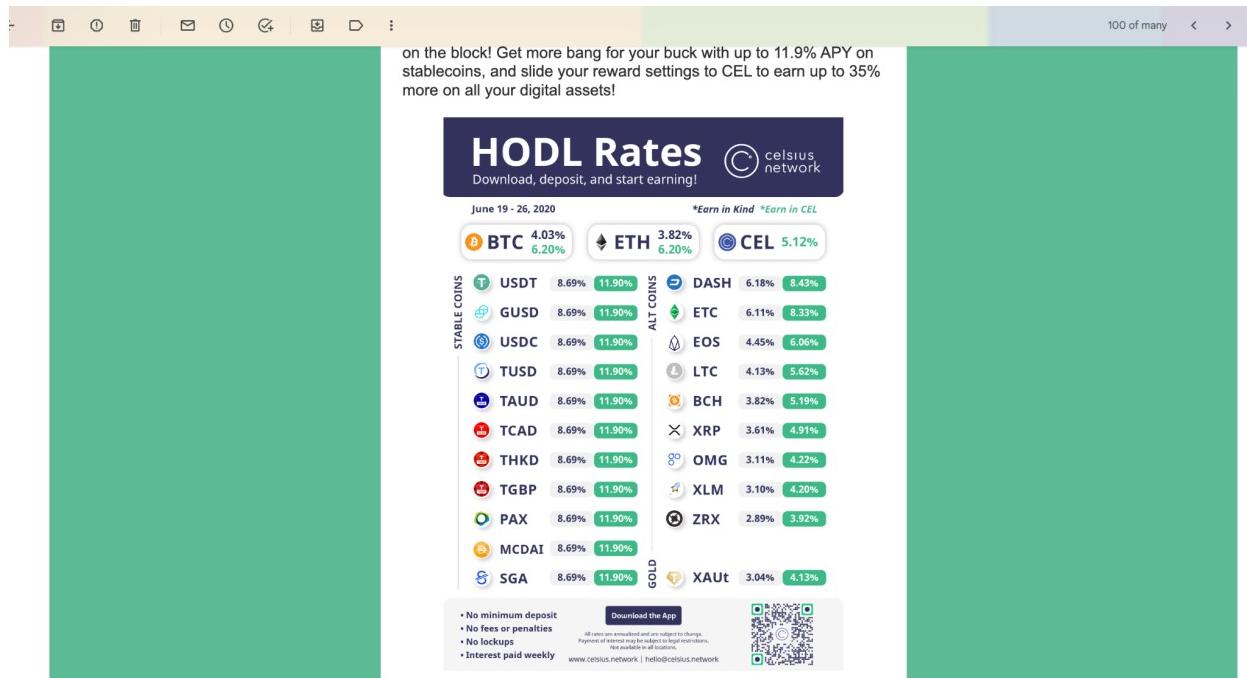
A deposit of
2.55214817 BTC
has been credited to your account.

Your new **BTC** balance is **2.55428894 BTC**

If you have any questions, please be sure to check out our [Help Center](#) page or contact [Celsius Support](#).

Celsius, 1 Bartholomew Lane,

4. Rate of return email



5. Rewards email

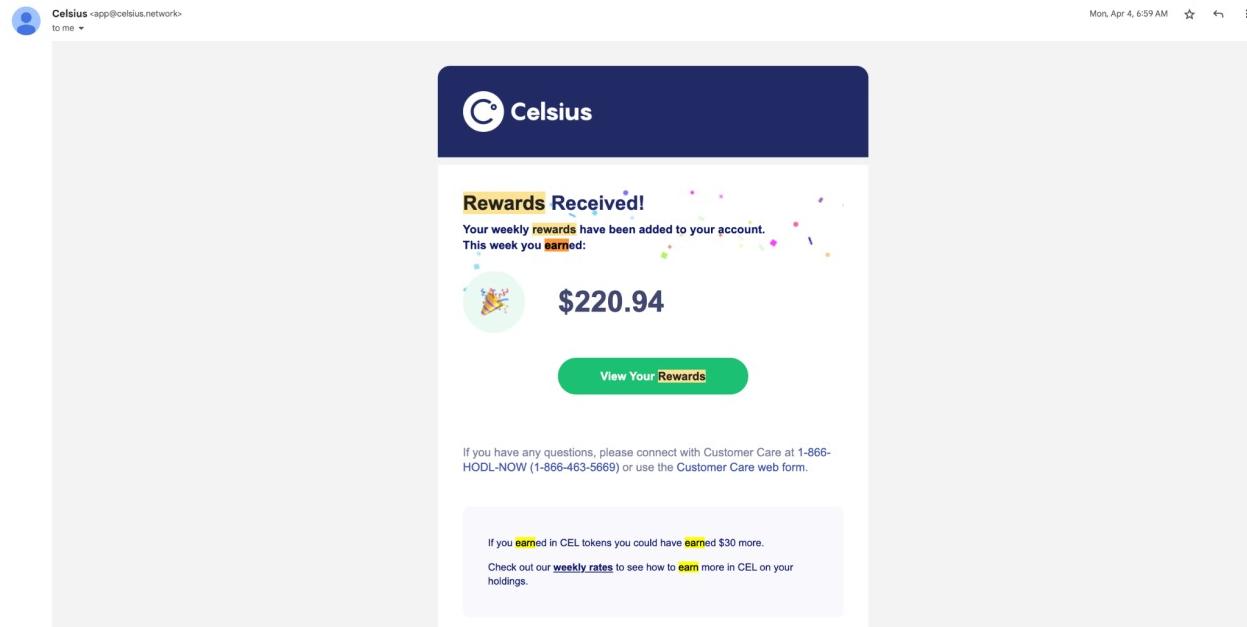


Exhibit B

B. Taxes 2020 - Form 1099 received from Celsius for assets deposited with Celsius.

		<input type="checkbox"/> CORRECTED (if checked)
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. CELSIUS NETWORK LIMITED 35 GREAT ST HELEN'S LONDON UNITED KINGDOM		1 Rents 2 Royalties 3 Other income \$731.79 4 Fishing boat proceeds 5 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale 6 Medical and health care payments 7 Substitute payments in lieu of dividends or interest 8 Gross proceeds paid to an attorney 9 Crop insurance proceeds 10 Section 409A deferrals 11 Excess golden parachute payments 12 Nonqualified deferred compensation 13 State tax withheld 14 State/Payer's state no. 15 State income CA
PAYER'S TIN 98-1528554	RECIPIENT'S TIN [REDACTED]	OMB No. 1545-0115 2020 Miscellaneous Income Form 1099-MISC
RECIPIENT'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code CONNIE KWAN [REDACTED] REDWOOD CITY, CA 94062		4 Federal income tax withheld 6 Medical and health care payments 8 Substitute payments in lieu of dividends or interest 10 Gross proceeds paid to an attorney 12 Section 409A deferrals 14 Nonqualified deferred compensation 16 State/Payer's state no. 17 State income CA
Account number (see instructions) ORSN0KADQVRVA1N1VEIQ		FATCA filing requirement <input type="checkbox"/>

Form 1099-MISC (keep for your records) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service

		<input type="checkbox"/> CORRECTED (if checked)
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. CELSIUS NETWORK LLC 221 RIVER STREET 9TH FLOOR HOBOKEN, NJ 07030		1 Rents 2 Royalties 3 Other income \$7,028.23 4 Fishing boat proceeds 5 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale 6 Medical and health care payments 7 Substitute payments in lieu of dividends or interest 8 Gross proceeds paid to an attorney 9 Crop insurance proceeds 10 Fish purchased for resale 11 Section 409A deferrals 12 Excess golden parachute payments 13 Nonqualified deferred compensation 14 State tax withheld 15 State/Payer's state no. 16 State income CA
PAYER'S TIN 87-1192148	RECIPIENT'S TIN [REDACTED]	OMB No. 1545-0115 2021 Miscellaneous Information Form 1099-MISC
RECIPIENT'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code CONNIE KWAN [REDACTED] [REDACTED], CA		4 Federal income tax withheld 6 Medical and health care payments 8 Substitute payments in lieu of dividends or interest 10 Gross proceeds paid to an attorney 12 Section 409A deferrals 14 Nonqualified deferred compensation 16 State/Payer's state no. 17 State income CA
Account number (see instructions) ORSN0KADQVRVA1N1VEIQ		FATCA filing requirement <input type="checkbox"/>

Form 1099-MISC (keep for your records) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service

Exhibit B

a) Celsius emails regarding “Important Celsius Update For Our U.S. Clients” My assets are to remain in Earn if I do not take action. The email fails to mention (obfuscates) the added risk for Earn account holders over Custody or any such clauses in the new ‘Terms of Use’.

Note that there is no mention of the ‘Cease and Desist’ orders from certain states. Instead the email implies that Celsius is working closely with regulators around the works and the changes to the Earn account are being made in consultation with the regulators.

Important Celsius Update For Our U.S. Clients External Inbox

 Celsius <hello@celsius.network>
to me ▾

Tue, Apr 12, 10:25 AM ☆ ↵

 Celsius

Tuesday, April 12th, 2022

Dear Connie,

Today, we are writing to give our community advance notice of upcoming changes, which will go into effect on April 15, 2022. These changes provide a path forward for our users in the United States to continue holding coins and **earning** rewards with Celsius.

As we previously have acknowledged, Celsius has been working closely with regulators around the world. It is our intention to be as transparent with our community as possible. More specifically, we have been in ongoing discussions with United States regulators regarding our **Earn** product.

As a result, there will be changes to the way our **Earn** product will work for users based in the United States.

Here's how these changes impact you:

- All coins transferred to Celsius by users in the United States prior to April 15, 2022 will continue to **earn** rewards. Those existing coins will continue to **earn** rewards from April 15th and onward for as long as they remain in your Celsius account.

Here's how these changes impact you:

- All coins transferred to **Celsius** by users in the United States prior to April 15, 2022 will continue to **earn** rewards. Those existing coins will continue to **earn** rewards from April 15th and onward, for as long as they remain in their **Earn** accounts.
- On April 15, 2022, **Celsius** will be launching a new **Custody** solution for users in the United States. Your **Custody** account will serve as the centerpiece of your home for crypto, providing a secure way to navigate across **Celsius**' products, including store, access, borrow, spend, **earn** and grow.
- **New transfers made by non-accredited investors in the United States will be held in their new Custody accounts and will not earn rewards.** Non-accredited investors can continue to swap, borrow, and transfer within their **Custody** accounts based on their local jurisdiction.
- All coins posted as collateral against a loan that is opened prior to April 15, 2022, will be returned to their **Earn** accounts when the loan is repaid. Those coins will resume **earning** rewards for as long as they remain in their **Earn** accounts.
- **Verified accredited investors in the United States will be able to add new coins into their Earn accounts to earn rewards.** For additional information on how to become an accredited investor, contact us at <https://celsius.network/customer-care> or [read more](#).
- Users located outside of the United States will be unaffected by these changes. They will continue to have access to all of the products and services available to them prior to these changes.
- Watch our **Custody** [tutorial video](#) to learn more.

Celsius will never stop advocating for financial freedom and we thank our community for their ongoing support. We will continue to provide updates as we engage with regulators and ensure the delivery of our services to our users globally.

If you have questions or require additional assistance, contact us at 1-866-HODL-NOW (1-866-463-5669). Our Customer Care Center is available Monday - Saturday, from 10AM - 11PM EST or contact us at <https://celsius.network/customer-care>

Sincerely,
The **Celsius** Team

